

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 13, 2015

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson, Bayer, Souza, Burgoyne and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the Senate Judiciary and Rules Committee (Committee) to order at 1:00 p.m.

MINUTES APPROVAL: **Senator Tippetts** moved to approve the Minutes of February 16, 2015. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Johnson** moved to approve the Minutes of March 2, 2015. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Davis** moved to print **RS 23792** and **RS 23811**. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

RS 23840 **Senator Rice** gave a brief explanation of **RS 23840** on human trafficking. Coercion as a defense has been added to the bill. The bill provides direct guidance for the victim regarding the requirements for the petition.

MOTION: **Senator Tippetts** moved to print **RS 23840**. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

RS 23754C1 **Senator Burgoyne** stated **RS 23754C1** provides for an interim legislative task force to study contested cases, the process for appealing, and contracting with administrative hearing officers. The purpose is to promote and preserve impartiality and due process for the public when involved in these cases.

MOTION: **Vice Chairman Hagedorn** moved to print **RS 23754C1**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

S 1136 **Sandy Jones**, Commission of Pardons and Paroles (Commission), explained that **S 1136** is an adjustment to the original language of the Justice Reinvestment Initiative Act (JRI). The change will allow the Commission to delegate to a hearing officer certain powers and duties when a parole violation occurs.

MOTION: **Senator Johnson** moved to send **S 1136** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 101 **Representative Luker** explained **H 101** repeals two statutes the JRI feels were not needed. The first, Idaho Code § 18-707, is the power given to a sheriff for impressment of a posse and is outdated. The second, Idaho Code § 49-230, deals with tampering with vehicles but is duplicated in other sections.

MOTION: **Senator Souza** moved to send **H 101** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion.

A discussion ensued with **Vice Chairman Hagedorn**, **Senator Tippetts**, and **Senator Burgoyne** regarding the use of an active posse and the civil liability of commandeering a posse. They also discussed aspects of tampering with vehicles and repeal of the penalty. **Representative Luker** and **Ms. Holly Rebholtz-Koole**, Idaho Prosecuting Attorney Association, gave answers as needed.

The motion carried by **voice vote**.

H 102 **Representative Luker** stated that **H 102** is a change to curfew violation making it an infraction with a \$150 fine.

Senator Jordan expressed concern over striking the word "detention" and wondered if language is needed allowing a juvenile to be detained while a parent is being found. **Representative Luker** said there is no arrest authority with an infraction. You can detain without arresting with probable cause.

Senator Davis clarified the bill as dealing with the punishment side of the problem.

TESTIMONY: **Kathy Griesmyer**, ACLU, spoke in support of the bill. She said moving curfew violations from misdemeanors to infractions helps reduce the case load of public defenders.

MOTION: **Senator Souza** moved to send **H 102** to the floor with a **do pass** recommendation. **Vice Chairman Hagedorn** seconded the motion. The motion carried by **voice vote**.

H 121 **Representative Luker** stated the bill modifies and updates H 434. The Idaho Supreme Court identified two statutes in which a fine was not set. This bill amends those statutes and sets a fixed fine.

MOTION: **Vice Chairman Hagedorn** moved to send **H 121** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

H 159 **Representative Luker** said this bill deals with the use of tobacco products by minors addressing distribution and use separately. The use of tobacco products would be an infraction, and distribution and sales or use of false identification to obtain such products would be a first offense infraction with a \$200 fine. The second offense would be a misdemeanor.

Chairman Lodge questioned the \$200 fine for a first time offender, as she knows this has happened. **Representative Luker** mentioned that under the law now it is a misdemeanor carrying a \$200 fine.

Senator Burgoyne questioned if the reduction of the misdemeanor penalty was more reasonable or if it would avoid public defender issues. **Representative Luker** said it was for the reasonable penalty. **Senator Burgoyne** noted that the courts can require a tobacco awareness program now. He asked if the court is going to have this option. **Representative Luker** replied that was a question not raised before. The penalty for an infraction would simply be a ticket unless contested by the defendant. This is something that could be looked at and clarified.

Senator Davis asked if a juvenile would be guilty of distribution if caught sharing a cigarette with a friend. **Representative Luker** answered yes. It is a misdemeanor. **Senator Davis** questioned if the term "distribution" can be defined. **Representative Luker** replied that the definition of distribution was not discussed. The determination of the act of distribution is left to the discretion of the officer involved. It is something that can be reviewed.

Senator Johnson asked what the violations are of Subsection 4 and 5. **Representative Luker** explained these are exculpatory for those involved in undercover police work. It protects them from violations when doing wrong in the course of their duty.

MOTION: **Vice Chairman Hagedorn** moved to send **H 159** to the floor with a **do pass** recommendation. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 1:45 p.m.

Senator Lodge
Chair

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary